

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Dig Safe Notice No. 744

In Re: Irick Excavating, Alleged Violation of June 26,     )  
2010, as reported by FairPoint Communications             )

Order entered: 5/24/2011

**ORDER RE: NOTICE OF PROBABLE VIOLATION**

**Background**

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to Irick Excavating ("Respondent").
2. Incident Date: June 26, 2010
3. Incident Location: 14 Mott Farm Road, Alburg, VT
4. Name and Address of Company that Reported the Incident to the Department: FairPoint Communications, 800 Hinesburg Road, South Burlington, VT 05403
5. Date Incident Reported to Effected Utility: June 26, 2010
6. Date NOPV issued by Department: April 7, 2011 (#1856)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 6/22/10, Irick Excavating requested a Digsafe mark out to plant trees at his site in Alburg, VT. Irick Excavating operated their machinery beyond the scope of the Digsafe ticket at which location the machinery did damage an unmarked FairPoint distribution wire. This caused a loss of service to several customers for 2 hours. The wire was not marked out because the Digsafe ticket request called in did not include this location. Irick Excavating notified FairPoint of the damaged facility. The Department of Public Service issued 0 Notices of Probable Violation (NOPV's) to Irick Excavating during the 12 months preceding this incident."
8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7004

9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Three Hundred Dollars (\$300.00), and attendance at a Department-approved underground damage prevention seminar.
10. The Respondent has agreed to take the remedial action(s) recommended by the Department.<sup>1</sup>

### **Conclusion and Order**

Because the Respondent has not contested the NOPV, or the allegations therein, we conclude that the remedial action proposed in the NOPV is appropriate, and should be imposed.<sup>2</sup>

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

(1) Within thirty days of the date of this Order, Irick Excavating shall pay a civil penalty in the amount of Three Hundred Dollars (\$300.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701; and

(2) Irick Excavating shall attend an Underground Damage Prevention Seminar at such time and place as determined by the Vermont Department of Public Service.

---

1. *See*, Respondent's filing of 4/15/11.

2. *See*, Public Service Board Rule 3.807(G).

Dated at Montpelier, Vermont, this 24<sup>th</sup> day of May, 2011.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: May 24, 2011

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*